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असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on dated 6th August, 2001.

BILL NO. 67 OF 2001

A Bill to provide for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Competition Act, 2001.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Short title,
extent and
commence-
ment.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “acquisition” means, directly or indirectly, acquiring or agreeing to acquire—

(i) shares, voting rights or assets of any enterprise; or

- (ii) control over management or control over assets of any enterprise;
- (b) "agreement" includes any arrangement or understanding or action in concert,—
 - (i) whether or not, such arrangement, understanding or action is formal or in writing; or
 - (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
- (c) "Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 9;
- (d) "Commission" means the Competition Commission of India established under sub-section (1) of section 7;
- (e) "consumer" means any person who—
 - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
 - (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;
- (f) "Director General" means the Director General appointed under sub-section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;
- (g) "enterprise" means a person or a department of the Government, who or which is, or has been, or is proposed to be, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation.—For the purposes of this clause,—

- (a) "activity" includes profession or occupation;
- (b) "article" includes a new article and "service" includes a new service;
- (c) "unit" or "division", in relation to an enterprise, includes—
 - (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
 - (ii) any branch or office established for the provision of any service;
- (h) "financial institution" means a public financial institution specified under section 4A of the Companies Act, 1956 and includes a State Financial, Industrial or Investment Corporation; 1 of 1956.
- (i) "goods" means goods as defined in the Sale of Goods Act, 1930 and includes— 8 of 1930.
 - (A) products manufactured, processed or mined;

(B) debentures, stocks and shares after allotment;

(C) in relation to goods supplied, distributed or controlled in India, goods imported into India;

(j) "Member" means a Member of the Commission appointed under sub-section (1) of section 9 and includes the Chairperson;

(k) "notification" means a notification published in the Official Gazette;

(l) "person" includes—

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm;

(v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956;

(vii) any body corporate incorporated by or under the laws of a country outside India;

(viii) a co-operative society registered under any law relating to co-operative societies;

(ix) a local authority;

(x) every artificial juridical person, not falling within any of the preceding sub-clauses;

(m) "practice" includes any practice relating to the carrying on of any trade by a person or an enterprise;

(n) "prescribed" means prescribed by rules made under this Act;

(o) "price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing;

(p) "regulations" means the regulations made by the Commission under section 62;

(q) "relevant market" means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

(r) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

(s) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

(t) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as accounting, banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging,

entertainment, amusement, construction, repair, conveying of news or information and advertising;

(u) "shares" means shares in the share capital of a company carrying voting rights and includes—

(i) any security which entitles the holder to receive shares with voting rights;

(ii) stock except where a distinction between stock and share is expressed or implied;

(v) "statutory authority" means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;

(w) "trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;

(x) "turnover" includes value of sale of goods or services;

(y) words and expressions used but not defined in this Act and defined in the Companies Act, 1956 shall have the same meanings respectively assigned to them in that Act. 1 of 1956.

CHAPTER II

PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATIONS

Prohibition of agreements

Anti-competitive agreements.

3. (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

Explanation.—For the purposes of this sub-section,—

(a) "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding;

(b) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- (a) tie-in arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition.

Explanation.—For the purposes of this sub-section,—

(a) “tie-in arrangements” includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

(b) “exclusive supply agreement” includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

(c) “exclusive distribution agreement” includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;

(d) “refusal to deal” includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(e) “resale price maintenance” includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;

(5) Nothing contained in this section shall apply to—

14 of 1957.

(a) “copyright” under the Copyright Act, 1957;

39 of 1970.

(b) “patent” or “exclusive right” granted under the Patents Act, 1970;

47 of 1999.

(c) “collective mark”, “permitted use”, “registered proprietor”, “registered trade mark” or “registered user” under the Trade Marks Act, 1999;

48 of 1999.

(d) “homonymous geographical indication” or “geographical indications” registered under the Geographical Indications of Goods (Registration and Protection) Act, 1999;

16 of 2000.

(e) “design” registered under the Designs Act, 2000;

37 of 2000.

(f) “layout-design” registered under the Semi-conductor Integrated Circuits Layout-Design Act, 2000;

(g) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

Prohibition of abuse of dominant position

4. (1) No enterprise shall abuse its dominant position.

(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise,—

(a) directly or indirectly, imposes unfair or discriminatory—

(i) condition in purchase or sale of goods or services; or

(ii) price in purchase or sale (including predatory price) of goods or service;

or

Abuse of
dominant
position.

(b) limits or restricts—

(i) production of goods or provision of services or market therefor; or
(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.—For the purposes of this section, the expression—

(a) “dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, whether in India or outside India, which enables it to—

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favour;

(b) “predatory price” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Regulation of combinations

Combination.

5. The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—

(a) any acquisition where—

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—

(A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) any group or an enterprise belonging to such group whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) the group or its constituent enterprise over which control has been acquired, or is being acquired along with the enterprise over which the acquirer already has direct or indirect, control jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or

(c) any merger or amalgamation in which—

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) the group, or its constituent enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars.

Explanation.—For the purposes of this section,—

(a) “control” includes controlling the affairs or management by—

(i) one or more enterprises, either jointly or singly, over another enterprise or group;

(ii) one or more groups, either jointly or singly, over another group or enterprise;

(b) “group” means two or more enterprises which, directly or indirectly, are in a position to —

(i) exercise twenty-six per cent. or more of the voting rights in another enterprise; or

(ii) appoint more than fifty per cent. of the members of the board of directors in another enterprise; or

(iii) control the management or affairs of another enterprise;

(c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

6. (1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

Regulation of combinations.

(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, may, at his or its option, give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within seven days of—

(a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

(b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.

(3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in sections 29, 30 and 31.

(4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.

(5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in sub-section (4), shall, within seven days from the date of the acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

Explanation.—For the purposes of this section, the expression—

(a) “foreign institutional investor” has the same meaning as assigned to it in clause (a) of the Explanation to section 115AD of the Income-tax Act, 1961;

43 of 1961.

(b) “venture capital fund” has the same meaning as assigned to it in clause (b) of the Explanation to clause (23FB) of section 10 of the Income-tax Act, 1961.

43 of 1961.

CHAPTER III

Competition Commission of India

Establishment
of
Commission.

7. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the “Competition Commission of India”.

(2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.

(4) The Commission may establish offices at other places in India.

Composition
of
Commission.

8. (1) The Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government :

Provided that the Central Government shall appoint the Chairperson and a Member during the first year of the establishment of the Commission.

(2) The Chairperson and every other Member shall be the persons of ability, integrity and standing, who—

(a) are, or have been, or are qualified to be, Judge of a High Court; or

(b) have special knowledge of, and professional experience in, not less than fifteen years, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, be useful to the Commission.

(3) The Chairperson and other Members shall be whole-time Members.

9. (1) The Chairperson and every other Member shall be appointed by the Central Government on the recommendation of a Selection Committee consisting of—

Appointment of
Chairperson
and other
Members.

- (a) the Chief Justice of India or his nominee — Chairperson;
- (b) the Union Minister-in-charge of the Ministry of Finance — Member;
- (c) the Union Minister-in-charge of the Ministry or
Department dealing with this Act — Member;
- (d) the Governor of the Reserve Bank of India — Member;
- (e) the Cabinet Secretary — Member.

(2) The Secretary-in-charge of the Ministry or the Department of the Central Government dealing with this Act shall be the Convenor of the Selection Committee.

(3) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of the Chairperson or a Member, make a reference to the Selection Committee for filling up of the vacancy.

(4) The Selection Committee shall finalise the selection of the Chairperson and a Member within one month from the date on which the reference under sub-section (3) is made to it.

(5) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(6) Before recommending any person for appointment as the Chairperson or other Member of the Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as the Chairperson or a Member.

(7) No appointment of the Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

10. (1) The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Term of office
of Chairperson
and other
Members.

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

- (a) in the case of the Chairperson, the age of seventy years;
- (b) in the case of any other Member, the age of sixty-five years.

(2) A vacancy caused by the resignation or removal of the Chairperson or any other Member under section 11 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of section 9.

(3) The Chairperson and every other Member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, manner and before such authority, as may be prescribed.

(4) In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(5) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions.

11. (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation,
removal and
suspension of
Chairperson
and other
Members.

Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) Subject to the provisions of sub-section (4), any Member shall only be removed from his office by order of the Central Government on the ground of proved misbehaviour after the Supreme Court, on reference being made to it by the Central Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the Supreme Court, reported that the Member, ought on any such ground to be removed.

(3) The Central Government may suspend from office the Chairperson or a Member, as the case may be, in respect of whom a reference has been made to the Supreme Court under sub-section (2), until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,—

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has engaged at any time, during his term of office, in any paid employment; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has become physically or mentally incapable of acting as a Member.

(5) Notwithstanding anything contained in sub-section (4), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

Restriction on employment of Chairperson and other Members in certain cases.

12. The Chairperson and other Members shall not, for a period of six months from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

1 of 1956.

Administrative powers of Chairperson.

13. The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission.

Salary and allowances and other terms and service of Chairperson and other Members.

14. (1) There shall be paid to the Chairperson a salary, which is equal to the salary of a Judge of the Supreme Court.

(2) There shall be paid to a Member a salary, which is equal to the salary of a Judge of a High Court.

(3) The other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed.

(4) The salary, allowances and other terms and conditions of service of the Chairperson or a Member shall not be varied to his disadvantage after appointment.

Vacancy, etc., not to invalidate proceedings of Commission.

15. No act or proceeding of the Commission shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as a Chairperson or as a Member; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

16. (1) The Central Government may, by notification, appoint a Director General and as many Additional, Joint, Deputy or Assistant Directors General, as it may think fit, for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for the conduct of cases before the Commission and for performing such other functions as are, or may be, provided by or under this Act.

Appointment of Director-General, etc.

(2) Every Additional, Joint, Deputy and Assistant Directors General shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.

(3) The salary, allowances and other terms and conditions of service of the Director General and Additional, Joint, Deputy and Assistant Directors General shall be such as may be prescribed.

(4) The Director General, and Additional, Joint, Deputy and Assistant Directors General shall be appointed from amongst persons of integrity and outstanding ability and who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

17. (1) The Commission may appoint a Registrar and such officers and other employees, as it considers necessary for the efficient performance of its functions under this Act.

Registrar and officers and other employees of Commission.

(2) The salaries and allowances payable to and other terms and conditions of service of the Registrar and officers and other employees of the Commission shall be such as may be prescribed.

CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF COMMISSION

18. Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers, and ensure freedom of trade carried on by other participants, in markets in India.

Duties, of Commission.

19. (1) The Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on—

Inquiry into certain agreements and dominant position of enterprise.

(a) receipt of a complaint from any person, consumer or their association or trade association; or

(b) a reference made to it by the Central Government or a State Government or a statutory authority.

(2) Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).

(3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:—

(a) creation of barriers to new entrants in the market;

(b) driving existing competitors out of the market;

(c) foreclosure of competition by hindering entry into the market;

(d) accrual of benefits to consumers;

(e) improvements in production or distribution of goods or provision of services;

or

(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely :—

- (a) market share of the enterprise;
- (b) size and resources of the enterprise;
- (c) size and importance of the competitors;
- (d) economic power of the enterprise including commercial advantages over competitors;
- (e) vertical integration of the enterprises or sale or service network of such enterprises;
- (f) technical advantages including advantages such as copyright patents, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design referred to in clauses (a) to (f) of sub-section (5) of section 3, or similar commercial rights acquired by the enterprise;
- (g) dependence of consumers on the enterprise;
- (h) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
- (i) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
- (j) countervailing buying power;
- (k) market structure and size of market;
- (l) social obligations and social costs;
- (m) any other factor which the Commission may consider relevant for the inquiry.

(5) For determining whether a market constitutes a “relevant market” for the purposes of this Act, the Commission shall have due regard to the “relevant geographic market” or “relevant product market”.

(6) The Commission shall, while determining the “relevant geographic market”, have due regard to all or any of the following factors, namely:—

- (a) regulatory trade barriers;
- (b) local specification requirements;
- (c) national procurement policies;
- (d) adequate distribution facilities;
- (e) transport costs;
- (f) language;
- (g) consumer preferences;
- (h) need for secure or regular supplies or rapid after-sales services.

(7) The Commission shall, while determining the “relevant product market”, have due regard to all or any of the following factors, namely:—

- (a) physical characteristics or end-use of goods;
- (b) price of goods or service;
- (c) consumer preferences;
- (d) exclusion of in-house production;
- (e) existence of specialised producers;
- (f) classification of industrial products.

20. (1) The Commission may, upon its own knowledge or information relating to acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of section 5 or merger or amalgamation referred in clause (c) of that section inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India:

Inquiry into
combination
by
Commission.

Provided that the Commission shall not initiate any inquiry under this sub-section after the expiry of one year from the date on which such combination has taken effect.

(2) The Commission shall, on receipt of a notice under sub-section (2) of section 6 or upon receipt of a reference under sub-section (2) of section 21, inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.

(3) Notwithstanding anything contained in section 5, the Central Government shall, on the expiry of a period of two years from the date of commencement of this Act and thereafter every two years, in consultation with the Commission, by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turn over, for the purposes of that section.

(4) For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:—

- (a) actual and potential level of competition through imports in the market;
- (b) extent of barriers to entry to the market;
- (c) level of combination in the market;
- (d) degree of countervailing power in the market;
- (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- (f) extent of effective competition likely to sustain in a market;
- (g) extent to which substitutes are available or are likely to be available in the market;
- (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- (j) nature and extent of vertical integration in the market;
- (k) possibility of a failing business;
- (l) nature and extent of innovation;
- (m) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

21. (1) Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of this Act, then such statutory authority shall make a reference in respect of such issue to the Commission.

Reference
by statutory
authority.

(2) On receipt of a reference under sub-section (1), the Commission shall, after hearing the parties to the proceedings, give its opinion to such statutory authority which shall thereafter pass such order on the issues referred to in that sub-section as it deems fit.

22. (1) The jurisdiction, powers and authority of the Commission may be exercised by Benches thereof.

Benches of
Commission.

(2) The Benches shall be constituted by the Chairperson and each Bench shall consist of not less than two Members.

(3) Every Bench shall consist of at least one Judicial Member.

Explanation.—For the purposes of this sub-section, “Judicial Member” means a Member who is, or has been, or is qualified to be, a Judge of a High Court.

(4) The Bench over which the Chairperson presides shall be the Principal Bench and the other Benches shall be known as the Additional Benches.

(5) There shall be constituted by the Chairperson one or more Benches to be called the Mergers Bench or Mergers Benches, as the case may be, exclusively to deal with matters referred to in sections 5 and 6.

(6) The places at which the Principal Bench, other Additional Bench or Mergers Bench shall ordinarily sit shall be such as the Central Government may, by notification, specify.

Distribution
of business
amongst
Commission
and Benches.

23. (1) Where any Benches are constituted, the Chairperson may, from time to time, by order, make provisions as to the distribution of the business of the Commission amongst the Benches and specify the matters, which may be dealt with by each Bench.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairperson thereon shall be final.

(3) The Chairperson, with the prior approval of the Central Government, may—

(i) transfer a Member from one Bench to another Bench; or

(ii) authorise the Members of one Bench to discharge also the functions of the Members of other Bench.

(4) The Chairperson may, for the purpose of securing that any case or matter which, having regard to the nature of the questions involved, requires or is required in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than two Members, issue such general or special orders as he may deem fit.

Procedure
for deciding
a case where
Members of
a Bench
differ in
opinion.

24. If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

Jurisdiction of
Bench.

25. An inquiry shall be initiated or a complaint be instituted or a reference be made under this Act before a Bench within the local limits of whose jurisdiction—

(a) the respondent, or each of the respondents, where there are more than one, at the time of the initiation of inquiry or institution of the complaint or making of reference, as the case may be, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the respondents, where there are more than one, at the time of the initiation of the inquiry or institution of complaint or making of reference, as the case may be, actually and voluntarily resides or carries on business or personally works for gain provided that in such case either the leave of the Bench is given, or the respondents who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation.—A respondent, being a person referred to in sub-clause (iii) or sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (l) of section 2, shall be deemed

to carry on business at its sole or principal place of business in India or at its registered office in India or where it has also a subordinate office at such place.

26. (1) On receipt of a complaint or a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information, under section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter.

Procedure for inquiry on complaints under section 19.

(2) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(3) Where on receipt of a complaint under clause (a) of sub-section (1) of section 19, the Commission is of the opinion that there exists no *prima facie* case, it shall dismiss the complaint and may pass such orders as it deems fit, including imposition of costs, if necessary.

(4) The Commission shall forward a copy of the report referred to in sub-section (2) to the parties concerned or to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General relates on a complaint and such report recommends that there is no contravention of any of the provisions of this Act, the complainant shall be given an opportunity to rebut the findings of the Director General.

(6) If, after hearing the complainant, the Commission agrees with the recommendation of the Director General, it shall dismiss the complaint.

(7) If, after hearing the complainant, the Commission is of the opinion that further inquiry is called for, it shall direct the complainant to proceed with the complaint.

(8) If the report of the Director General relates on a reference made under sub-section (1) and such report recommends that there is no contravention of the provisions of this Act, the Commission shall invite comments of the Central Government or the State Government or the statutory authority, as the case may be, on such report and on receipt of such comments, the Commission shall return the reference if there is no *prima facie* case or proceed with the reference as a complaint if there is a *prima facie* case.

(9) If the report of the Director General referred to in sub-section (2) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

27. Where after inquiry the Commission finds that any agreement or action, of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—

Orders by Commission after inquiry into agreements or abuse of dominant position.

(a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

(b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse;

(c) award compensation to parties in accordance with the provisions contained in section 34;

(d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

(f) recommend, to the Central Government for the division of an enterprise enjoying dominant position.

(g) pass such other order as it may deem fit.

Division of
enterprise
enjoying
dominant
position.

28. (1) The Central Government, on recommendation under clause (f) of section 27, may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.

(2) In particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely:—

- (a) the transfer or vesting of property, rights, liabilities or obligations;
- (b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
- (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
- (d) the payment of compensation to any person who suffered any loss due to dominant position of such enterprise;
- (e) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
- (f) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
- (g) any other matter which may be necessary to give effect to the division of the enterprise.

(3) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser.

Procedure for
investigation
of combina-
tions.

29. (1) Where the Commission is of the opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

(2) The Commission, if it is *prima facie* of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate; for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

(3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under sub-section (2).

(4) The Commission may, within fifteen working days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.

(5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within fifteen days from the expiry of the period specified in sub-section (4).

(6) After receipt of all information and within a period of forty-five working days from the expiry of the period specified in sub-section (5), the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31.

Inquiry into
disclosures
under sub-
section (2) of
section 6.

30. Where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall inquire—

- (a) whether the disclosure made in the notice is correct;

(b) whether the combination has or is likely to have an appreciable adverse effect on competition.

31. (1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6.

Orders of
Commission
on certain
combinations.

(2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

(3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination.

(4) The parties, who accept the modification proposed by the Commission under sub-section (3), shall carry out such modification within the period specified by the Commission.

(5) If the parties to the combination, who have accepted the modification under sub-section (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act.

(6) If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section.

(7) If the Commission agrees with the amendment submitted by the parties under sub-section (6), it shall, by order, approve the combination.

(8) If the Commission does not accept the amendment submitted under sub-section (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3).

(9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.

(10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that—

(a) the acquisition referred to in clause (a) of section 5; or

(b) the acquiring of control referred to in clause (b) of section 5; or

(c) the merger or amalgamation referred to in clause (c) of section 5,

shall not be given effect to;

Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section.

(11) If the Commission does not, on the expiry of a period of ninety working days from the date of publication referred to in sub-section (2) of section 29 pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.

Explanation.—For the purposes of determining the period of ninety working days specified in this sub-section, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub-section (8) shall be excluded.

(12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties.

(13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if, such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.

(14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

Acts taking place out-side India but having an effect on competition in India.

32. The Commission shall, notwithstanding that,—

- (a) an agreement referred to in section 3 has been entered into outside India; or
- (b) any party to such agreement is outside India; or
- (c) an abuse of dominant position referred to in section 4 has taken place outside India; or
- (d) any enterprise abusing the dominant position is outside India; or
- (e) a combination has taken place outside India; or
- (f) any party to combination is outside India; or
- (g) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

have power to inquire into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India.

Power to grant interim relief.

33. (1) Where during an inquiry before the Commission, it is proved to the satisfaction of the Commission, by affidavit or otherwise, that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 5 has been committed and continues to be committed or that such act is about to be committed, the Commission may grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary.

(2) The provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to a temporary injunction issued by a civil court, and any reference in any such rule to a suit shall be construed as a reference to any inquiry before the Commission.

5 of 1908.

Power to award compensation.

34. (1) Without prejudice to any other provisions contained in this Act, any person may make an application to the Commission for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by such enterprise.

(2) The Commission may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise.

(3) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908, shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon.

5 of 1908.

35. A complainant or defendant or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

Appearance
before
Commission.

Explanation.—For the purposes of this section,—

38 of 1949.

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980.

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

23 of 1959.

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

5 of 1908.

36. (1) The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have powers to regulate its own procedure including the places at which they shall have their sittings, duration of oral hearings when granted, and times of its inquiry.

Power of
Commission
to regulate
its own
procedure.

5 of 1908.

(2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

1 of 1872.

(e) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(f) dismissing an application in default or deciding it *ex parte*;

(g) any other matter which may be prescribed.

45 of 1860.

2 of 1974.

(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(4) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry or proceeding before it.

(5) The Commission may direct any person —

(a) to produce before the Director General or the Registrar or an officer authorised by it, such books, accounts or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;

(b) to furnish to the Director General or the Registrar or any officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.

(d) If the Commission is of the opinion that any agreement referred to in section 3 or abuse of dominant position referred to in section 4 or the combination referred to in section 5 has caused or is likely to cause an appreciable adverse effect on competition in the relevant market in India and it is necessary to protect, without further delay, the interests of consumers and other market participants in India, it may conduct an inquiry or adjudicate upon any matter under this Act after giving a reasonable oral hearing to the parties concerned.

Review of
orders of
Commission.

37. Any person aggrieved by an order of the Commission from which an appeal is allowed by this Act but no appeal has been preferred, may, within thirty days from the date of the order, apply to the Commission for review of its order and the Commission may make such order thereon as it thinks fit:

Provided that the Commission may entertain a review application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application in time:

Provided further that no order shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is given and the Director General where he was a party to the proceedings.

Rectification
of orders.

38. (1) With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.

(2) Subject to the other provisions of this Act, the Commission may make—

(a) an amendment under sub-section (1) of its own motion;

(b) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

Execution of
orders of
Commission.

39. Every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be, within the local limits of whose jurisdiction,—

(a) in the case of an order against a person referred to in sub-clause (iii) or sub-clause (vi) or sub-clause (vii) of clause (1) of section 2, the registered office or the sole or principal place of business of the person in India or where the person has also a subordinate office, that subordinate office, is situated;

(b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated,

and thereupon the court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution.

Appeal.

40. Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

5 of 1908.

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days:

Provided further that no appeal shall lie against any decision or order of the Commission made with the consent of the parties.

CHAPTER V

DUTIES OF DIRECTOR GENERAL

Director-
General to
investigate
contraven-
tions.

41. (1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder.

(2) The Director-General shall have all the powers as are conferred upon the Commission under sub-section (2) of section 36.

1 of 1956. (3) Without prejudice to the provisions of sub-section (2), sections 240 and 240A of the Companies Act, 1956, so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act.

CHAPTER VI

PENALTIES

42. (1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

Contraven-
tion of orders
of Commi-
ssion.

(2) The Commission may, while making an order under this Act, issue such directions to any person or authority, not inconsistent with this Act, as it thinks necessary or desirable, for the proper implementation or execution of the order, and any person who commits breach of, or fails to comply with, any obligation imposed on him under such direction, may be ordered by the Commission to be detained in civil prison for a term not exceeding one year unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

43. If any person fails to comply with a direction given by—

- (a) the Commission under sub-section (5) of section 36; or
- (b) the Director General while exercising powers referred to in sub-section (2) of section 41,

the Commission shall impose on such person a penalty of rupees one lakh for each day during which such failure continues.

Penalty for
failure to
comply with
directions of
Commission
and Director
General.

44. If any person, being a party to a combination,—

- (a) makes a statement which is false in any material particular, or knowing it to be false; or
- (b) omits to state any material particular knowing it to be material,

such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission.

Penalty for
making false
statement or
omission to
furnish
material
information.

45. (1) Without prejudice to the provisions of section 44, if any person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—

- (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or
- (b) omits to state any material fact knowing it to be material; or
- (c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

the Commission shall impose on such person a penalty which may extend to rupees ten lakhs.

Penalty for
offences in
relation to
furnishing of
information.

(2) Without prejudice to the provisions of sub-section (1), the Commission may also pass such other order as it deems fit.

46. (1) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Contravention
by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act, or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER VII

COMPETITION ADVOCACY

Competition
advocacy.

47. (1) In formulating a policy on competition, the Central Government may make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit.

(2) The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government in formulating such policy.

(3) The Commission shall take suitable measures, as may be prescribed, for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

CHAPTER VIII

FINANCE, ACCOUNTS AND AUDIT

Grants by
Central
Government.

48. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

Constitution
of Fund.

49. (1) There shall be constituted a fund to be called the "Competition Fund" and there shall be credited thereto—

(a) all Government grants received by the Commission;

(b) the monies received as costs from parties to proceedings before the Commission;

(c) the fees received under this Act;

(d) the interest accrued on the amounts referred to in clauses (a) to (c).

(2) The Fund shall be applied for meeting—

(a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries, allowances and pension payable to the Director General, Additional, Joint, Deputy or Assistant Directors General, the Registrar and officers and other employees of the Commission;

(b) the other expenses of the Commission in connection with the discharge of its functions and for the purposes of this Act.

(3) The Fund shall be administered by a committee of such Members of the Commission as may be determined by the Chairperson.

(4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

50. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts
and audit.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

Explanation.—For the removal of doubts, it is hereby declared that the orders of the Commission, being matters appealable to the Supreme Court, shall not be subject to audit under this section.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

51. (1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues, as the Central Government may, from time to time, require.

Furnishing
of returns,
etc., to
Central
Government.

(2) The Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER IX

MISCELLANEOUS

52. The Central Government may, by notification, exempt from the application of this Act, or any provision thereof, and for such period as it may specify in such notification—

Power to
exempt.

(a) any class of enterprises if such exemption is necessary in the interest of security of the state or public interest;

(b) any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;

(c) any enterprise which performs a sovereign function on behalf of the Central Government or a State Government.

53. (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Power of
Central
Government
to issue
directions.

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of
Central
Government
to super-
sede Com-
mission.

54. (1) If at any time the Central Government is of the opinion—

(a) that on account of circumstances beyond the control of the Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Commission has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Commission for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Commission to make representations against the proposed supersession and shall consider representations, if any, of the Commission.

(2) Upon the publication of a notification under sub-section (1) superseding the Commission,—

(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify in this behalf;

(c) all properties owned or controlled by the Commission shall, until the Commission is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Commission by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Restriction
on disclo-
sure of
information.

55. No information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

Members,
Director
General,
Registrar,
officers and
employees,
etc., of
Commission
to be public
servants.

56. The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and other officers and employees of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

57. No suit, prosecution or other legal proceedings shall lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director-General, Additional, Joint, Deputy or Assistant Directors-General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Protection of action taken in good faith.

58. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Act to have overriding effect.

59. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Exclusion of jurisdiction of civil courts.

60. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of other laws not barred.

61. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which and the authority before whom the oath of office and of secrecy shall be made and subscribed to under sub-section (3) of section 10;

(b) the other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under sub-section (3) of section 14;

(c) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General under sub-section (3) of section 16;

(d) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General under sub-section (4) of section 16;

(e) the salaries and allowances and other terms and conditions of service of the Registrar and officers and other employees payable under sub-section (2) of section 17;

(f) the rules for the purpose of securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of section 23;

(g) any other matter in respect of which the Commission shall have power under clause (g) of sub-section (2) of section 36;

(h) the promotion of competition advocacy, creating awareness and imparting training about competition issues under sub-section (3) of section 47;

(i) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 50;

(j) the time within which and the form and manner in which the Commission may furnish returns, statements and such particulars as the Central Government may require under sub-section (1) of section 51;

(k) the form in which and the time within which the annual report shall be prepared under sub-section (2) of section 51;

(l) the manner in which the monies transferred to the Central Government shall be dealt with by that Government under the fourth proviso to sub-section (2) of section 64;

(m) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

(3) Every notification issued under sub-section (3) of section 20 and section 52 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule,

or both Houses agree that the notification should not be issued or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule, as the case may be.

Power to
make
regulations.

62. (1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters, namely:—

(a) the cost of production to be determined under clause (b) of the *Explanation* to section 4;

(b) the form of notice as may be specified and the fee which may be determined under sub-section (2) of section 6;

(c) the form in which details of the acquisition shall be filed under sub-section (5) of section 6;

(d) any other matter in respect of which provision is to be, or may be, made by regulations.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

Power to
remove
difficulties.

63. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and
saving.

64. (1) The Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.

54 of 1969.

(2) On the dissolution of the Monopolies and Restrictive Trade Practices Commission, the person appointed as the Chairman of the Monopolies and Restrictive Trade Practices Commission and every other person appointed as Member and Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration and any officer and other employee of that Commission and holding office as such immediately before such dissolution shall vacate their respective offices and such Chairman and other Members shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of term of their office or of any contract of service:

Provided that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission appointed on deputation basis to the Monopolies and Restrictive Trade Practices Commission, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be:

Provided further that the Director General of Investigation and Registration Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission, employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:

14 of 1947. Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee, employed in the Monopolies and Restrictive Trade Practices Commission, to the Central Government shall not entitle such Directors General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officer or other employee any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Monopolies and Restrictive Trade Practices Commission has established a provident fund, superannuation, welfare or other fund for the benefit of the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or the officers and other employees employed in the Monopolies and Restrictive Trade Practices Commission, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Monopolies and Restrictive Trade Practices Commission to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by the said Government in such manner as may be prescribed.

(3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act, including such cases, in which any unfair trade practice has also been alleged, shall, on such commencement, stand transferred to the Competition Commission of India and shall be adjudicated by that Commission in accordance with the provisions of the repealed Act as if that Act had not been repealed.

54 of 1969. (4) Subject to the provisions of sub-section (3), all cases pertaining to unfair trade practices other than those referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 and the National Commission shall dispose of such cases as if they were cases filed under that Act.

68 of 1986. (5) All cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act.

(6) All investigations or proceedings, other than those relating to unfair trade practices, pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the

Competition Commission of India, and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

(7) All investigations or proceedings, relating to unfair trade practices other than those referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 and the National Commission may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit. 54 of 1969. 68 of 1986.

(8) All investigations or proceedings relating to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade practices Act, 1969, and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India and the Competition Commission of India may conduct or order for conduct of such investigation in the manner as it deems fit. 54 of 1969.

(9) Save as otherwise provided under sub-sections (3) to (8), all cases or proceedings pending before the Monopolies and Restrictive Trade Practices Commission shall abate.

(10) The mention of the particular matters referred to in sub-sections (3) to (8) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal. 10 of 1897.

STATEMENT OF OBJECTS AND REASONS

In the pursuit of globalisation, India has responded by opening up its economy, removing controls and resorting to liberalisation. The natural corollary of this is that the Indian market should be geared to face competition from within the country and outside. The Monopolies and Restrictive Trade Practices Act, 1969 has become obsolete in certain respects in the light of international economic developments relating more particularly to competition laws and there is a need to shift our focus from curbing monopolies to promoting competition.

2. The Central Government constituted a High Level Committee on Competition Policy and Law. The Committee submitted its report on the 22nd May, 2000 to the Central Government. The Central Government consulted all concerned including the trade and industry associations and the general public. The Central Government after considering the suggestions of the trade and industry and the general public decided to enact a law on Competition.

3. The Competition Bill, 2001 seeks to ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in markets within India and, for this purpose, provides for the establishment of a quasi-judicial body to be called the Competition Commission of India (hereinafter referred to as CCI) which shall also undertake competition advocacy for creating awareness and imparting training on competition issues.

4. The Bill also aims at curbing negative aspects of competition through the medium of CCI. CCI will have a Principal Bench and Additional Benches and will also have one or more Mergers Benches. It will look into violations of the Act, a task which could be undertaken by the Commission based on its own knowledge or information or complaints received and references made by the Central Government, the State Governments or statutory authorities. The Commission can pass orders for granting interim relief or any other appropriate relief and compensation or an order imposing penalties etc. An appeal from the orders of the Commission shall lie to the Supreme Court. The Central Government will also have powers to issue directions to the Commission on policy matters after considering its suggestions as well as the power to supersede the Commission if such a situation is warranted.

5. The Bill also provides for investigation by the Director - General for the Commission. The Director-General would be able to act only if so directed by the Commission but will not have any *suo-moto* powers for initiating investigations.

6. The Bill confers power upon the CCI to levy penalty for contravention of its orders, failure to comply with its directions, making of false statements or omission to furnish material information, etc. The CCI can levy upon an enterprise a penalty of not more than ten per cent. of its average turn-over for the last three financial years. It can also order division of dominant enterprises. It will also have power to order demerger in the case of mergers and amalgamations that adversely affect competition.

7. The Bill also seeks to create a fund to be called the Competition Fund. The grants given by the Central Government, costs realised by the Commission and application fees charged will be credited into this Fund. The pay and allowances and the other expenses of the Commission will also be borne out of this Fund. The Bill provides for empowering the Comptroller and

Auditor-General of India to audit the accounts of the Commission. The Central Government will be required to lay the annual accounts of the Commission, as audited by the Comptroller and Auditor-General and also the annual report of the Commission before both the Houses of Parliament.

8. The Bill aims at repealing the Monopolies and Restrictive Trade Practices Act, 1969 and the dissolution of the Monopolies and Restrictive Trade Practices Commission. The Bill provides that the cases pending before the Monopolies and Restrictive Trade Practices Commission will be transferred to the CCI except those relating to unfair trade practices which are proposed to be transferred to the relevant fora established under the Consumer Protection Act, 1986.

9. The Bill seeks to achieve the above objectives.

ARUN JAITLEY.

NEW DELHI;
The 24th July, 2001.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. PC-5/23/2000-IGC, dated the 30th July, 2001 from Shri Arun Jaitley, Minister of Law, Justice and Company Affairs to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Competition Bill, 2001 has recommended its introduction in Lok Sabha under article 117(1) of the Constitution and for its consideration by Lok Sabha under article 117(3) of the Constitution.

Notes on clauses

Clause 1.—This clause, *inter alia*, seeks to extend the provisions of the Bill to the whole of India excluding the State of Jammu and Kashmir.

Clause 2.—This clause defines various expressions used in the Bill.

Clause 3.—This clause, *inter alia*, provides for prohibition of entering into anti-competitive agreements. It shall not be lawful for any enterprise or association of enterprises or person or association of persons to enter into an agreement in respect of production, supply, storage, distribution, acquisition or control of goods or provision of service which causes or is likely to cause an appreciable adverse effect on competition within India. All such agreements entered into in contravention of the aforesaid prohibition shall be void. This clause also specifies certain activities which shall be presumed to have an appreciable adverse effect on competition and also specifies certain agreements which shall be in contravention of sub-clause (1) of the said clause if such agreement causes appreciable adverse effect on competition. The provision of this clause shall not apply to certain rights specified in sub-clause (5) of this clause.

Clause 4.—This clause prohibits abuse of dominant position by any enterprise. Such abuse of dominant position, *inter alia*, includes imposition, either directly or indirectly, of unfair or discriminatory purchase or selling prices or conditions, including predatory prices of goods or service, limiting production or restricting of goods or provision of service, indulging in practices resulting in denial of market access, making the conclusion of contracts subject to acceptance by other parties of supplementary obligations and using dominant position in one market to enter into or protect other market.

Clause 5.—This clause deals with combination of enterprises and persons. The acquisition of one or more enterprises by one or more persons or acquiring of control or merger or amalgamation of enterprises under certain circumstances specified in the said clause shall be construed as combination.

Clause 6.—This clause, *inter alia*, provides that no person or enterprise shall enter into a combination which is likely to cause or causes an appreciable adverse effect on competition within the relevant market in India. It further provides exemption from the provisions of this clause to certain institutions specified in sub-clause (2) of the said clause.

Clause 7.—This clause provides for the establishment of the Competition Commission of India. The Commission shall be a body corporate by the aforesaid name having perpetual succession and a common seal with power to acquire, hold and dispose of property. The place of head office of the Commission shall be decided by the Central Government. However, the Commission can establish offices at other places in India.

Clause 8.—This clause provides for the composition of the Commission. The Commission shall consist of the Chairperson and not less than two and not more than ten other Members, as may be specified by the Central Government. However the Central Government shall appoint the Chairperson and a member during first year of the establishment of the Commission. This clause also lays down that the Chairperson and other Members shall be persons of ability, integrity and standing. A person who is or has been or is qualified to be a Judge of a High Court or is having special knowledge of, and professional experience in, not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, be useful to the Commission, shall be eligible for appointment as the Chairperson or as a Member.

Clause 9.—This clause, *inter alia*, provides for the appointment of the Chairperson and Members of the Commission. The appointment shall be made by the Central Government on the recommendation of the Selection Committee consisting of the Chief

Justice of India or his nominee, the Union Minister-in-charge of the Ministry of Finance, the Union Minister-in-charge of the Ministry or Department of the Central Government dealing with the proposed legislation, the Governor of the Reserve Bank of India and the Cabinet Secretary. However, an appointment made to the office of the Chairperson or a Member shall not be invalid merely on the ground that there is any defect in the constitution of the Selection Committee or any vacancy therein.

Clause 10.—This clause, *inter alia*, provides for the term of office of the Chairperson and other Members. Such term of the office shall be five years. However, no Chairperson shall hold office after he attains the age of seventy years and no other Member shall hold office after he attains the age of sixty-five years. This clause also provides for discharge of functions of the Chairperson by the senior-most Member in case the Chairperson is unable to discharge his functions.

Clause 11.—This clause, *inter alia*, contains provisions relating to resignation, removal and suspension of the Chairperson and other Members. Sub-clause (1) of this clause provides for the manner of resignation of the Chairperson or any Member. Sub-clause (2) provides that the Chairperson or a Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour after an inquiry made by the Supreme Court in accordance with the procedure prescribed in this behalf by it. Sub-clause (3) confers power upon the Central Government to suspend the Chairperson or a Member in respect of whom a reference has been made to the Supreme Court. Sub-clause (4) provides for other circumstances under which the Chairperson or any Member can be removed from office by the Central Government.

Clause 12.—This clause provides that the Chairperson or a Member shall not, for a period of six months from the date on which they cease to hold office, accept any employment in or connected with the management or administration of any enterprise which has been a party to a proceeding before the Commission. However, such a restriction of employment shall not apply in case of any employment under the Central Government or a State Government or a local authority or a statutory authority or corporation established by a Central, State or Provincial Act, or in a Government company.

Clause 13.—This clause empowers the Chairperson to have general superintendence, direction and control in respect of all administrative matters of the Commission.

Clause 14.—This clause deals with the salary and allowances and other terms and conditions of service of the Chairperson and other Members of the Commission. The salary of the Chairperson shall be equal to that of a Judge of the Supreme Court and the salary of a Member shall be equal to that of a Judge of a High Court. The salary and allowances and other terms and conditions of service of the Chairperson and other Members shall not be varied to their disadvantage after their appointment.

Clause 15.—This clause provides that any act or proceeding of the Commission shall not be invalidated merely on the ground of existence of any vacancy in or any defect in the constitution of the Commission or defect in any appointment or any irregularity in the procedure of the Commission not affecting the merits of the case.

Clause 16.—This clause provides for the appointment of Director General, Additional, Joint, Deputy and Assistant Directors General for the purpose of assisting the Commission in conducting inquiry into the contravention of the provisions of the proposed legislation, for conduct of cases before the Commission and performing such other functions as are or may be provided by or under the proposed legislation. It also empowers the Central Government to specify, by rules, their qualifications, the salary and allowances payable to them and the other conditions of their service.

Clause 17.—This clause empowers the Commission to appoint Registrar and other officers and employees necessary for the efficient performance of its functions under the proposed legislation. The salary and allowances payable to such officers and employees and other terms and conditions of their service shall be determined by rules made by the Central Government.

Clause 18.—This clause deals with the duties, of the Commission. It provides that it shall be the duty of the Commission to eliminate practices having adverse effect on competition, to promote and sustain competition in markets in India, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India.

Clause 19.—This clause empowers the Commission to inquire into violation of provisions of sub-clause (1) of clause 3 or sub-clause (1) of clause 4 of the Bill either on its own motion or on receipt of a complaint from any person, consumer or their association or trade association or on a reference made to it by the Central Government or a State Government or a statutory authority alleging violation of any of those provisions. This clause further lays down the factors which shall be considered by the Commission for the purpose of determining whether an agreement has an appreciable adverse effect on competition, whether an enterprise enjoys the dominant position, or whether a market constitutes a relevant market for the purposes of the proposed legislation.

Clause 20.—This clause, *inter alia*, empowers the Commission to make inquiry as to whether a combination causes or is likely to cause an appreciable adverse effect on competition in India. It also lays down the limitation of time for initiation of inquiry as one year from the date on which the combination has taken effect when such inquiry is conducted by the Commission upon its own knowledge or information. This clause further lays down the factors which the Commission would take into account for determining whether the combinations has appreciable adverse effect on the competition in the relevant market.

Clause 21.—This clause contains provisions relating to the circumstances under which a reference can be made to the Commission by statutory authorities. It provides that if in the course of a proceeding before any statutory authority, entrusted with the responsibility of regulating any goods or service or market therefor, a party has raised an issue that the decision taken by the statutory authority would be contrary to the provisions of the Bill, then the statutory authority shall be bound to make a reference to the Commission. The Commission will, after hearing parties to the proceedings, shall, give to the statutory authority its opinion and the statutory authority shall thereafter pass its orders.

Clause 22.—This clause contains provisions relating to constitution of Benches of the Commission and exercise of the jurisdiction, powers and authority of the Commission by such Benches. Sub-clauses (2) and (3) stipulate that each Bench shall consist of two Members of which at least one Member shall be Judicial Member. A Judicial Member shall be a Member who is or has been or is qualified to be a Judge of a High Court. Sub-clause (4) provides that the Bench over which the Chairperson presides shall be the Principal Bench and the other Benches shall be known as Additional Benches. Sub-clause (5) empowers the Chairperson to constitute one or more Benches to be called Mergers Benches which will exclusively deal with matters referred to in clauses 5 and 6 of the Bill. Sub-clause (6) empowers the Central Government to specify, by notification, the places at which the Principal Bench and other Benches shall sit.

Clause 23.—This clause deals with distribution of business of the Commission amongst its Benches. It also empowers the Chairperson to transfer a Member from one Bench to another and also to authorise a Member of one Bench to discharge the functions as a Member of any other Bench with the prior approval of the Central Government.

Clause 24.—This clause deals with the procedure for deciding a case where the Members of a Bench differ in opinion. It provides that if Members of a Bench differ in their opinion on any point or points, they shall state such point or points on which they differ and make a reference to the Chairperson. The Chairperson may hear such point or points himself or refer the case for hearing on such point or points by one or more of the other Members. The point or points as decided, according to the opinion of the majority of the Members who have heard the case including those who had first heard it, shall be the decision of the Commission.

Clause 25.—This clause lays down the jurisdiction of a Bench of the Commission. It provides that an inquiry shall be initiated or a complaint be instituted or a reference be made

under the proposed legislation before a Bench within the local limits of jurisdiction of which the respondent or each of the respondents, actually and voluntarily resides or carries on business or personally works for gain or the cause of action, wholly or in part, has arisen. The *Explanation* to this clause specifies the category of respondents in whose case the registered or principal office or subordinate office shall be the place of his business.

Clause 26.—This clause lays down the detailed procedure for any inquiry initiated *suo motu* by the Commission and various complaints and references referred to in clause 19 of the Bill. In case the Commission is of the opinion in respect of any complaint referred to in item (a) of sub-clause (1) of clause 19 of the Bill that no *prima facie* case is existing, it shall dismiss the complaint and pass such orders as it may deem fit including imposition of costs, if any. If the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the alleged matter. The Director General is required to submit a report on his findings on such allegation to the Commission within the period allowed by the Commission. On receipt of the report of the Director General in respect of the said matter, the Commission shall forward a copy of the same to the parties concerned or to the Central Government or the State Government, as the case may be. In case the report of the Director General recommends that there is no contravention of the provisions of the Bill, the complainant shall be given an opportunity to rebut the findings of the Director General. If, after hearing the complainant, the Commission agrees with the recommendations of the Director General, the Commission shall dismiss the complaint. In case, the Commission, after hearing the complainant, is of the opinion that further inquiry is required to be conducted, it shall direct the complainant to proceed with the complaint. If the report of the Director General relates to a reference and such report recommends that there is contravention of any of the provisions of the Bill, the Commission shall invite the comments from the Central Government or the State Government or the statutory authority, as the case may be, and it shall return the reference if there is no *prima facie* case or the Commission may proceed with the reference as a complaint if there is a *prima facie* case.

Clause 27.—This clause deals with various orders which the Commission is competent to pass after an inquiry. If, on inquiry, the Commission finds that the agreements or the actions of an enterprise in a dominant position are in contravention of the provisions of clauses 3 and 4, it may pass any order which may, *inter alia*, include an order directing any enterprise or association of enterprises or person or association of persons involved in the agreement or abuse of dominant position to discontinue and not to re-enter into any such agreement or abuse, as the case may be, imposing such penalty as the Commission deems fit which shall not be more than ten per cent. of the average of the turnover for the last three years upon each such person or enterprise which is a party to the agreement or abuse of dominant position, awarding compensation to the parties, directing modification of the agreement, recommending to the Central Government the division of any such enterprise enjoying dominant position or complying with its directions including a direction to pay costs.

Clause 28.—This clause empowers the Central Government on the recommendation of the Commission to order division of an enterprise enjoying dominant position so as to ensure that it does not abuse its dominant position. Sub-clause (2) of the said clause enumerates the various matters relating to such division in respect which the Central Government may pass the order for division of such enterprise.

Clause 29.—This clause lays down the detailed procedure for investigation of combinations if the Commission is of the opinion that any combination is likely to cause or has caused an appreciable adverse effect on competition within the relevant market in India.

Clause 30.—This clause deals with an inquiry by the Commission on receipt of a notice under sub-clause (2) of clause 6. The Commission shall inquire into whether the disclosure mentioned in the notice is correct and whether the combination has or is likely to have an appreciable adverse effect on competition.

Clause 31.—This clause empowers the Commission to issue orders on certain combinations. Sub-clause (1) of the said clause provides that if the Commission is of the opinion that a combination does not or is not likely to have an appreciable adverse effect on competition, it shall, by order, approve the combination including a combination in respect of which a notice has been given under sub-clause (2) of clause 6. Sub-clause (2) of the said clause empowers the Commission to direct that a combination shall not take effect, if it is of the opinion that the combination has or is likely to have an appreciable adverse effect on competition. Sub-clause (3) empowers the Commission to propose suitable modifications in the combinations in case the adverse effect could be eliminated. Sub-clauses (4) to (12) contain provisions relating to acceptance of the modifications suggested by the Commission, amendments to such modifications proposed by the parties to the combination, within the time specified in those clauses and effect of acceptance or non-acceptance of such modifications and amendments by the Commission and the parties to the combinations.

Clause 32.—This clause empowers the Commission to inquire into an agreement or abuse of dominant position or combination if such agreements or dominant position or combination has or likely to have an appreciable adverse effect on competition in India even if such agreement or abuse of dominant position or combination as specified in sub-clauses (a) to (g) of the said clause take place outside India.

Clause 33.—This clause empowers the Commission to grant interim relief by way of temporary injunctions.

Clause 34.—This clause empowers the Commission to deal with applications made to it by any applicant for an order for recovery of compensation from any enterprise for any loss or damage shown to have been suffered by him as a result of any contravention of the provisions of Chapter II, and to award compensation to such applicant.

Clause 35.—This clause contains provisions relating to the persons who are entitled to appear in proceedings before the Commission. It provides that a complainant, defendant or the Director General may either appear in person or authorise one or more chartered accountants, or company secretaries or cost accountants or legal practitioners, or any of the officers of such complainant, defendant or Director General to present the case before the Commission.

Clause 36.—This clause confers powers upon the Commission to regulate its own procedure while conducting inquiries. The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. Sub-clause (2) confers upon the Commission the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit. Such powers include powers for summoning witnesses, production of documents, receiving evidence on affidavits, deciding cases *ex parte*, etc. Sub-clause (3) provides that the proceedings before the Commission shall be judicial proceedings within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. Sub-clause (4) confers powers upon the Commission to call certain experts from fields specified in this sub-clause to assist it in an inquiry or proceeding. Sub-clause (5) confers power upon the Commission to direct any person to produce, before the Director General or Registrar or any officer authorised by it, books, accounts or other documents in the custody or control of such person and to furnish to the Director General or Registrar or any officer authorised by the Commission, any information relating to trade which may be in possession of such person. Sub-clause (6) confers power upon the Commission to conduct inquiry or adjudicate in matters after giving oral hearing to the parties concerned.

Clause 37.—This clause provides for review of orders of the Commission in certain cases.

Clause 38.—This clause provides for rectification of orders of the Commission for rectifying any mistakes apparent from the record.

Clause 39.—This clause contains provisions regarding execution of orders of the Commission. The orders of the Commission under the proposed legislation shall be enforced

by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein.

Clause 40.—This clause provides for filing of an appeal. Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order to him on one or more grounds specified in section 100 of the Code of Civil Procedure, 1908 arising out of such decision or order. However, in case of delay in filing such appeal before the Supreme Court, that Court may allow filing of appeal within a further period not exceeding sixty days if the appellant can satisfy the court that he was prevented by sufficient cause from filing the appeal within the said period of sixty days.

Clause 41.—This clause seeks to empower the Director General to investigate contravention of the provisions of the proposed legislation or the rules or regulations made thereunder. The Director General shall, when so directed by the Commission, assist the Commission in investigating such contraventions. The provisions of section 240 relating to production of documents and evidence and section 240A relating to seizure of documents by inspector under the Companies Act, 1956 shall, so far as may be, apply in conducting the investigations by the Director General or any other person investigating under his authority as they apply to an inspector appointed under that Act.

Clause 42.—This clause provides that if any person contravenes without any reasonable ground the order of the Commission or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter accorded, given, made or granted under the proposed legislation or fails to pay the penalty imposed under the Act, he shall be liable to be detained in civil prison for a term which may extend to one year or shall be liable to a penalty not exceeding rupees ten lakhs.

Clause 43.—This clause provides for imposition of penalty for failure to comply with the directions of the Commission under sub-clause (5) of clause 36 or the Director General under sub-clause (2) of clause 41. The Commission may impose a penalty of rupees one lakh for each day during which the person has failed to comply with the direction given under those sub-clauses by the Commission or the Director-General, as the case may be.

Clause 44.—This clause provides for the penalty for making false statements or omission to furnish material information by any person being a party to a combination. Such penalty shall not be less than rupees fifty lakh but it may extend up to rupees one crore, as may be determined by the Commission.

Clause 45.—This clause provides for the penalty for offences in relation to furnishing of information. If any person furnishes any statement or document which he knows or has reason to believe to be false in any material particular or omits to state any material fact, knowing to be material or wilfully alters, suppresses or destroys any document which is required to be furnished, the Commission may impose a penalty which may extend to rupees ten lakh. The Commission may also pass such other orders as it deems fit.

Clause 46.—This clause contains provisions relating to contravention by companies. This clause, *inter alia*, provides that every person who, at the time of contravention of any of the provisions mentioned in that clause, was in charge of and was responsible to the company as well as the company, shall be deemed to have acted in contravention of the said provision and shall be liable to be proceeded against and punished accordingly. However, such person shall not be liable to punishment if he proves that contravention was committed without his knowledge or that he had exercised all due diligence to prevent such contravention.

Clause 47.—This clause contains provisions for competition advocacy by the Commission. In formulating policy, the Central Government may make a reference to the Commission for its opinion on possible effects of such policy on competition. The Commission is required to give its opinion to the Central Government within sixty days from the date of such reference. Such opinion shall not be binding upon the Central Government. The Commission is also required to take suitable measures for the promotion of competition advocacy creating awareness and imparting training about the competition issues as may be prescribed.

Clause 48.—This clause provides for grants to the Commission by the Central Government. The grants shall be made after due appropriation made by Parliament.

Clause 49.—This clause provides for the constitution of a fund to be called the "Competition Fund". There shall be credited to the Fund all Government grants, monies received as costs and fees received and the interest accrued on the said amounts. The Fund may be applied for meeting the various expenses of the Commission including payment of salary to the Chairperson and other Members, Director General, Additional, Joint, Deputy and Assistant Directors General, Registrar, officers and staff of the Commission. The Fund shall be administered by a committee of such Members of the Commission as may be determined by the Chairperson.

Clause 50.—This clause provides that the Commission shall maintain proper accounts and other relevant records in the form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India and those accounts shall be audited by the Comptroller and Auditor-General of India with the same rights and privileges as in the case of audit of Government accounts. This clause also provides that the accounts of the Commission as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be laid every year before each House of Parliament. It is further provided that the orders of the Commission being matters appealable to the Supreme Court, shall not be subject to audit under this clause.

Clause 51.—This clause provides for furnishing of returns, etc., by the Commission to the Central Government.

Clause 52.—This clause empowers the Central Government, by notification, to exempt any class of enterprises from all or any of the provisions of the proposed legislation for such period as may be specified in that notification if such exemption is necessary in the interest of security of the State or public interest or any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty or international agreement or convention. This exemption may also be given to any enterprise which performs a sovereign function on behalf of the Central Government or a State Government.

Clause 53.—This clause empowers the Central Government to issue directions on questions of policy to the Commission. The Commission shall, in exercise of its powers or the performance of its functions under the proposed legislations, be bound on such directions on questions of policy. The Commission shall be given an opportunity to express its views before any such direction is given.

Clause 54.—This clause provides for supersession of the Commission in certain circumstances. The Central Government may, by notification, supersede the Commission for a period not exceeding six months, by notification, if the Central Government is of the opinion that on account of circumstances beyond the control of the Commission, it is unable to discharge its functions or perform its duties under the provisions of the proposed legislation or that the Commission has persistently defaulted in complying with any direction given by the Central Government under the proposed legislation or in the discharge of its functions or performance of the duties imposed on it by or under the provisions of proposed legislation and as a result of such default the financial position of the Commission or the administration of the Commission has suffered or that circumstances exist which render it necessary in the public interest so to do. The Central Government before issuing a notification of supersession shall give the Commission a reasonable opportunity to make representation against such supersession and shall also consider such representations, if any, made by the Commission. Sub-clause (2) deals with the effect of supersession. Sub-clause (3) provides for reconstitution of the Commission by a fresh appointment of Chairperson and other members. Sub-clause (4) provides for laying of the notification and a full report of any action taken under this clause before each House of Parliament.

Clause 55.—This clause deals with restriction on disclosure of information by the Commission.

Clause 56.—This clause provides that the Chairperson and other Members and the Director General, Additional Joint, Deputy or Assistant Directors General Registrar and other officers and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 57.—This clause provides for protection of action taken in good faith by the Central Government or Commission or any officer of the Central Government or Chairperson or any Member or Director General, Additional, Joint, Deputy or Assistant Directors General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under the proposed legislation or any rules and regulations made thereunder.

Clause 58.—This clause provides that the provisions of the proposed legislation shall have overriding effect on any other law for the time being in force.

Clause 59.—This clause provides for exclusion of jurisdiction of civil courts in respect of any matter which the Commission is empowered by or under the proposed legislation to determine.

Clause 60.—This clause seeks to provide that the provisions of the proposed legislation shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 61.—This clause confers upon the Central Government the power to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the various matters in respect of which such rules may be made. Sub-clause (3) provides that every notification issued under sub-clause (3) of clause 20 and clause 52 and every rule made by the Central Government under the proposed legislation shall be laid before both Houses of Parliament.

Clause 62.—This clause confers power upon the Commission to make regulations consistent with the proposed legislation and the rules made thereunder, to carry out the purposes of the proposed legislations. Sub-clause (2) enumerates the various matters in respect of which such regulations may be made by the Commission. Sub-clause (3) provides for laying of regulations before both Houses of Parliament.

Clause 63.—This clause seeks to empower the Central Government to make provision, by order, published in the Official Gazette, to remove difficulties which may arise in giving effect to the provisions of the Bill. However, such order can be issued only within a period of two years from the date of commencement of the proposed legislation. The orders made under this clause shall be required to be laid before both Houses of Parliament.

Clause 64.—This clause provides for repeal and savings. This clause, *inter alia*, proposes to repeal the Monopolies and Restrictive Trade Practices Act, 1969. Upon such repeal, the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the said Act shall stand dissolved. Sub-clauses (2) to (10) deal with the matters arising out of such repeal.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 7 of the Bill provides for the establishment of a Commission to be known as the Competition Commission of India with effect from such date as the Central Government may, by notification, appoint in this behalf. Sub-clause (3) provides that the head office of the Commission shall be at such place as the Central Government may decide. Sub-clause (4) enables the Commission to establish offices at other places in India.

2. Sub-clause (1) of clause 8 of the Bill provides that the Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government. During first year of its establishment, the Commission shall consist of a Chairperson and one Member. The Chairperson and other Members shall be the whole-time Members.

3. Sub-clause (1) of clause 14 of the Bill provides that the Chairperson shall be entitled to a salary equal to the salary of a Judge of the Supreme Court. Sub-clause (2) provides that a Member shall be paid salary equal to that of a Judge of a High Court. Sub-clause (3) provides that the other conditions of service relating to travelling expenses, provision of house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be specified by rules made by the Central Government.

4. Clause 16 of the Bill provides for appointment of a Director General and as many Additional, Joint, Deputy or Assistant Director Generals as the Central Government may think fit for assisting the Commission in conducting inquiry into contravention of the provisions of the proposed legislation and for performing such other functions as may be provided by or under the proposed legislation. Sub-clause (3) provides that the salary, allowances and other conditions of service of the Director General, Additional, Joint, Deputy or Assistant Director Generals shall be such as may be prescribed by the Central Government.

5. Sub-clause (1) of clause 17 of the Bill enables the Commission to appoint a Registrar and such officers and employees of the Commission as it considers necessary for the efficient performance of its functions under the proposed legislation. Sub-clause (2) provides that the salary and allowances payable and other terms and conditions of service of the Registrar, other officers and employees of the Commission shall be such as may be prescribed by the Central Government.

6. Clause 22 of the Bill provides that the jurisdiction, powers and authority of the Commission may be exercised by Benches thereof. The Chairperson may constitute one or more Bench including Mergers Benches.

7. Clause 48 of the Bill provides that the Central Government may, after due appropriation made by Parliament by law, make to the Commission grants of such sums of money as the Government may think fit for being utilised for the purposes of the proposed legislation.

8. The details of recurring and non-recurring expenditure for the first year, second year, third year and subsequent years for the establishment of the Competition Commission of India shall be as under:—

Statement showing year-wise Expenses (Rs. in lakhs)

	Recurring	Non-recurring	Total
First Year			
1. Principal Bench	56.94	24.26	81.21
2. Director General's Office	39.67	19.90	59.57
	96.61	44.17	140.78

	Recurring	Non-recurring	Total
Second Year			
1. Principal Bench	63.02	18.19	81.21
2. Director General's Office	43.63	15.94	59.57
3. Three Benches	147.05	55.77	202.82
4. Three Additional Director General's Offices	90.33	40.77	131.10
	344.03	130.67	474.70

	Recurring	Non-recurring	Total
Third Year and each subsequent year			
1. Principal Bench	73.70	7.51	81.21
2. Director General's Office	53.03	6.54	59.57
3. Three Benches	161.75	41.07	202.82
4. Three Additional Director General's Offices	103.54	27.56	131.10
5. One Merger Bench	44.98	22.62	67.60
6. One Additional Director General's Office	26.09	17.61	43.70
	463.09	122.91	586.00

9. The Bill will not involve any other expenditure of recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 20 of the Bill confers power upon the Central Government to enhance or reduce the value of assets or the value of turnover for the purposes of combination under the proposed legislation.

2. Clause 52 of the Bill confers power upon the Central Government to exempt, by notification, from the application of the proposed legislation or any provision thereof and for such period as it may specify in such notification, any class of enterprises if such exemption is necessary in the interest of security of the State or public interest or any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty or international agreement or convention or any enterprise which performs a sovereign function on behalf of the Central Government or a State Government.

3. Clause 61 of the Bill confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made relate, *inter alia*, to provide for the form and manner in which, and the authority before whom, the oath of office and of secrecy shall be made and subscribed under sub-section (3) of section 10; the other conditions of service relating to travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under sub-section (3) of section 14; the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General under sub-section (3) of section 16; the qualifications for appointment of the Director General or Additional, Joint, Deputy or Assistant Directors-General under sub-section (4) of section 16; the salaries, allowances and other terms and conditions of service of the Registrar and officers and other employees payable under sub-section (2) of section 17; the rules for the purpose of securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of section 23; any other matters in respect of which the Commission shall have power under clause (g) of sub-section (2) of section 36; the promotion of competition advocacy, creating awareness and imparting training about competition issues under sub-section (3) of section 47; the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 50; the time within which, and the form and manner in which the Commission may furnish returns, statements and such particulars as the Central Government may require under sub-section (1) of section 51; the form in which, and the time within which, the annual report shall be prepared under sub-section (2) of section 51; the manner in which the monies transferred to the Central Government shall be dealt with by that Government under fourth proviso to sub-section (2) of section 64; any other matter which is to be, or may be, prescribed or in respect of which provision is to be, or may be, made by rules.

4. Clause 62 of the Bill confers power upon the Competition Commission of India to make regulations consistent with the Act and the rules made thereunder to carry out the purposes of the Act. The matters in respect of which, regulations may be made, relate, *inter alia*, to provide for the cost of production to be determined under clause (b) of the *Explanation* to section 4; the form of notice as may be specified and the fee which may be determined under sub-section (2) of section 6; the form in which details of the acquisition shall be filed under sub-section (5) of section 6; any other matter in respect of which provision is to be, or may be, made by regulations.

5. The notifications issued under sub-section (3) of section 20 and section 52, the rules made by the Central Government and the regulations made by the Competition Commission of India shall be laid, as soon as may be, after they are made, before each House of Parliament.

6. The matters in respect of which notifications may be issued and the rules and regulations may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

G. C. MALHOTRA,
Secretary General.